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Attorneys for Appellees Bank of New York Mellon and Select Portfolio
Servicing, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LORI DIANE BACZKOWSKI,

Case No.: 6:16-cv-00150-MC

Appellant,

MOTION FOR ORDER TO SHOW
CAUSE WHY APPEAL SHOULD NOT
BE DISMISSED

v.

BANK OF NEW YORK MELLON;
QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON; and
SELECT PORTFOLIO SERVICING, INC.,

Appellees.

MOTION

Defendants Bank of New York Mellon, f/k/a The Bank of New York, as Trustee, on
Behalf of the Holders of the Alternative Loan Trust 2007-23CB, Mortgage Pass-Through

Certificates, Series 2007-23CB (the “**Trust**”) and Select Portfolio Servicing, Inc. (“**SPS**”) move for an order to show cause why this appeal should not be dismissed.

SUPPORTING MEMORANDUM

On January 26, 2016, Appellant Lori Diane Baczkowski (“**Appellant**”) filed her Notice of Appeal from an order of the United States Bankruptcy Court for the District of Oregon (“**Bankruptcy Court**”) dismissing her adversary proceeding. (Dkt. #1.) She has filed no other documents in this appeal since that time.

On January 28, 2016, this Court issued a Bankruptcy Appeal Scheduling Order and Case Assignment Notice (“**Scheduling Order**”). (Dkt. #5.) The Scheduling Order directed Appellant to “serve and file [her] brief within thirty (30) days after the docketing of notice that the record has been transmitted or is available electronically pursuant to Fed. R. Bankr. P. 8018.” (*Id.*) On February 10, 2016, the Bankruptcy Court docketed the transmittal of the record to this Court (“**Transmittal Notice**”). *Lori D. Baczkowski v. Bank of New York Mellon*, Bankr. D. Oregon Case No. 15-06085-fra, Dkt. #29.

Although more than thirty days have passed since the docketing of the transmittal notice, Appellant has not filed an opening brief. Nor has she filed a motion seeking an extension of time to file the same. Pursuant to Local Rule 2200-3(e) of the U.S. District Court for the District of Oregon, “[a]ppellant’s failure to file a brief timely may result in the dismissal of the appeal. A brief received after the due date may be stricken unless it is accompanied by a motion for an extension of time and the motion is granted. The court has no obligation to consider a late brief. Sanctions may be imposed, such as the waiver of oral argument, monetary sanctions, or

dismissal.”¹ Stated more simply, Appellant’s failure to file an opening brief timely is grounds for dismissal of her appeal.

Accordingly, the Trust and SPS request that the Court issue an order to show cause why Appellant’s appeal should not be dismissed for failure to prosecute. Should Appellant fail to timely and satisfactorily respond to the same, including filing of an opening brief and an accompanying motion for extension of time that is granted by the Court, the Trust and SPS request that the Court dismiss this appeal.

DATED: May 10, 2016.

STOEL RIVES LLP

/s/ Crystal S. Chase

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Attorneys for Appellees Bank of New York
Mellon and Select Portfolio Servicing, Inc.

¹ See also Ninth Circuit Bankruptcy Appellate Panel Rule 8018(a)-2, which provides that “[w]hen an appellant fails to file an opening brief timely, or otherwise fails to comply with rules or orders regarding processing the appeal, the BAP Clerk, after notice, may enter an order dismissing the appeal.”

CERTIFICATE OF SERVICE

I hereby certify that in addition to service upon counsel of record via the Court's CM/ECF system, I served the foregoing **MOTION FOR ORDER TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED** on the following named person(s) on the date indicated below by

- ☒ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery
- ☐ email
- ☐ notice of electronic filing using the Cm/ECF system

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Lori Diane Baczkowski
1025 NE Fall Dr
Grants Pass, OR 97526

Pro Se Appellant

DATED: May 10, 2016.

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/s/ Crystal S. Chase

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